



# California Fair Political Practices Commission

September 12, 1989

Honorable A. K. "Pete" Dougall  
City Councilmember  
214 East Branch Street  
P.O. Box 550  
Arroyo Grande, CA 93420

Re: Your Request for Informal Assistance  
Our File No. I-89-466

Dear Mr. Dougall:

This is in response to your request for advice concerning your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your inquiry is of a general nature and does not refer to a specific decision before your agency, we treat your request for advice as a request for informal assistance.<sup>2</sup>

## QUESTION

Does your spouse's employment with a bank doing business in your jurisdiction create a disqualifying conflict of interest for you?

## CONCLUSION

Where the bank at which your spouse is employed is directly involved in a decision before the Arroyo Grande City Council, you have a disqualifying interest and thus cannot participate in the decision. Where the same bank is indirectly involved in a decision by the city council, whether or not you may participate in the decision depends on the financial effect of the decision upon the bank.

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

### FACTS

You are a councilmember for the City of Arroyo Grande. At times, projects come before the city council which are either financed directly by a local bank or through a subsidiary development department of the bank. Your wife has been employed as a courier for this bank for several years. In this capacity, she delivers various bank papers to branches located around the county. Your wife's salary is in excess of \$500 per year.

Your wife has also purchased bank stock through the corporation's stock option plan. At present, your wife owns less than 100 shares of bank stock. Mr. Chris Christiansen, City Manager for the City of Arroyo Grande, has advised me that the value of this stock is under \$1,000.

### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which the official knows or has reason to know he has a financial interest.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the general public, on the official, a member of his or her immediate family, a business entity in which the official has an investment worth \$1,000 or more, or any source of income aggregating \$250 or more within 12 months prior to the decision. (Section 87103(a) and (c).)

By virtue of your position as a councilmember, you are a public official. (Section 82048.) Therefore, although your wife's stock holdings are too minor to constitute a disqualifying interest, the bank is a source of income to your spouse and thus a source of community property income to you. (Coit Advice Letter, No. A-81-148, copy enclosed.)

If it is reasonably foreseeable that a governmental decision will materially affect an official's economic interests in a manner distinguishable from the effect on the public generally, the official must disqualify himself from participating in the decision.<sup>3</sup> The effect of a decision is "reasonably foreseeable" if there is a substantial likelihood it will occur. Certainty is not required; however, if an effect is a mere possibility, it is not reasonably foreseeable. (Downey Cares v. Downey Community Development Com. (1987) 196 Cal. App. 3d 983; Witt v. Morrow

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<sup>3</sup> There is no question that decisions affecting the bank will affect your economic interests in a manner distinguishable from the effect on the general public. Thus, we shall not discuss the "public generally" exception in this analysis.

(1977) 70 Cal. App. 3d 817; In re Thorner (1975) 1 FPFC Ops. 198, copy enclosed.)

The effect of a decision is material if a business entity which has been a source of income to the official of \$250 or more in the preceding 12 months is directly or indirectly involved in the decision before the official's agency. (Regulations 18702.1(a)(1) and 18702.2, copies enclosed.)

A source of income to the public official is directly involved in the decision when (1) it initiates a proceeding by filing an application, claim, appeal, or similar request; or (2) it is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency; or (3) the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the source of income. (Regulation 18702.1(b).)

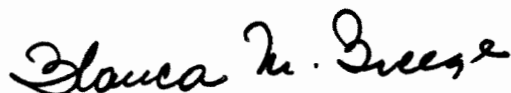
Applying these guidelines to your facts, we conclude that there is a substantial likelihood that any decision of the city council directly affecting the bank will have a material financial effect upon the bank. For example, if the bank appeared before the council to petition for a building permit or a variance, the effect of the decision would be material because the bank has been a source of community property income to you of \$250 or more in the preceding 12 months. Therefore, you must abstain from participating in any decision in which the bank is directly involved.

On the other hand, if the decision will affect the bank indirectly, then you must apply the guidelines provided by Regulation 18702.2. These guidelines would apply, for example, when a decision affects a project financed by the bank or by one of its subsidiaries.

In brief, because the bank is a source of community property income to you in a sum of at least \$250, you must abstain from participating in any decision which will have a reasonably foreseeable material financial effect on the bank as discussed above.

Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

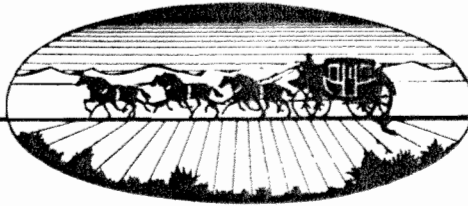
Sincerely,  
Kathryn E. Donovan  
General Counsel



By: Blanca M. Breeze  
Counsel, Legal Division

City of

Arroyo Grande



Phone 805-489-1303  
214 East Branch Street  
P. O. Box 550  
Arroyo Grande, CA 93420

August 7, 1989

FAIR POLITICAL PRACTICES COMMISSION  
428 "J" Street, Suite 800  
Sacramento, CA 95804

Ladies and Gentlemen:

SUBJECT: REQUEST FOR A WRITTEN RULING ON ECONOMIC  
CONFLICT OF INTEREST

Background

I have been advised that, due to my wife's employment with a bank, I have an economic conflict when projects come before the City Council that are either financed by the bank or a subsidiary arrangement exists through the development department of the bank.

My wife has been employed by the bank for several years as a courier. She delivers various bank papers to branches located around the county. Aside from salary, she has opted to purchase bank stock via the corporation's stock option plan. Her holdings are minor, in that she presently owns less than 100 shares, with an excess of 1,000,000 bank shares outstanding.

If the above information lacks detail, please feel free to call me at (805) 481-2934, or the City Manager, Chris Christiansen at (805) 489-1303.

I want to thank you in advance for your consideration in this matter.

Sincerely,

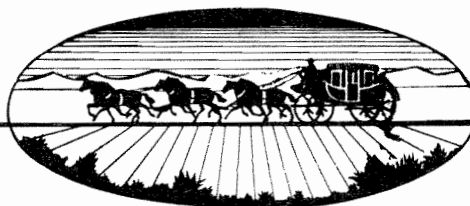
A. K. "PETE" DOUGALL  
COUNCILMAN

AKD/jsv

Aug 9 3 24 PM '89  
F P P C

City of

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Sincerely,

A. K. "PETE" DOUGALL  
COUNCILMAN

AKD/jsv

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# California Fair Political Practices Commission

August 10, 1989

Honorable A. K. Dougall  
Councilmember  
City of Arroyo Grande  
P.O. Box 550  
Arroyo Grande, CA 93420

Re: Letter No. 89-466

Dear Mr. Dougall:

Your letter requesting advice under the Political Reform Act was received on August 9, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Kathryn E. Donovan*  
Kathryn E. Donovan  
General Counsel

KED:plh